Supreme Court, U.S.
FILED

06-177 JUN 10 2006

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(2)

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

Isidoro Rodriguez, Esq.,

Petitioner,

v.

Danilo Davis Pereira,

Respondent.

On Petition For Writ of Certiorari
United States Court of Appeals for the Fourth Circuit

SUPPLEMENTAL APPENDIX

Isidoro Rodriguez, Esq.
Counsel for Petitioner

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b. The unpublished Report and Recommendation of the Hon. Magistrate Judge Barry R. Portez USDC for the E. D. of VA, No. 02-CV1523-A, February 11, 2005 ..... A-4

Filed: July 22, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ISIDORO RODRIGUEZ, ESQ.,	)
	)
Plaintiff,	)
	)
v.	)Civil No. 02-1523-A
	)
HPF, INC., *et al.*	)
	)
Defendants.	)

Judgment Order

THIS MATTER is before the Court on the February 11, 2005 Report and Recommendation of Magistrate Judge Barry IL Poretz regarding Plaintiff Isidoro Rodriguez's Motion for Default Judgment against Defendant Danilo Devis Pereira. Judge Poretz recommends that the Court dismiss the plaintiff's Motion for Default Judgment with prejudice for lack of personal jurisdiction. Plaintiff filed objections on February 23, 2005.

On October 15, 2002, Plaintiff Isidoro Rodriguez filed a Complaint against HFP, Inc., Iota Partners L.P., Armada Company, Sea Search Armada, Doe Entities 1-6, Murdoch & Company, Edris E. Harbeston, Jack Harbeston, Jerome Barron, Dave Laroque, Don Middlebrook, Ed Carpenter, Danilo Devis Pereira, and John Does 1-20. Plaintiff also sought *inter alia* to enforce a Virginia State Bar legal Ethics opinion under the Full Faith and Credit Act and a Virginia attorney's lien. Plaintiff additionally filed a

Notion Pursuant to the U.S. and Virginia Constitutions, as well as 28 U.S.C. 1738, for the Certification of Questions to the Supreme Court of Virginia seeking enforcement of the Attorney's Lien, and to Protect Said Lien from a Business Conspiracy and Tortious Interference. Judge Lee denied Plaintiff's motion for a certified question, and granted Defendants' Motions to Dismiss for Lack of Personal Jurisdiction. By a separate order Judge Lee held that this Court lacked personal jurisdiction over all of the Defendants, including Danilo Davis Pereira. The U.S. Court of Appeals for the Fourth Circuit affirmed Judge Lee's decision. *Rodriguez v. HFP, Inc.*, 77 Fed. Appx. 663, 2003 WL 22321038, *1 (4th Cir. 2003). The U.S. Supreme Court subsequently denied Plaintiff's petition for certiorari. 541 U.S. 903 (2004) (No. 03C 971)

On January 12, 2005, Plaintiff filed a Motion for Default Judgment against Danilo Devis Pereira. On February 8, 2005, Judge Lee assigned the case to Magistrate Judge Barry R. Poretz pursuant to 28 U.S.C. Section 636(b), and Federal Rule of Civil Procedure 72(b). Federal Rule of Civil Procedure 72(b) provides that a magistrate judge may hear a dispositive motion, without the consent of the parties, and recommend the disposition of the matter to a district judge. FED. R. CIV. P. 72(b). The Magistrate Judge found that this Court lacks the jurisdiction to hear Plaintiff's Motion for Default Judgment against Danilo Devis Pereira because Plaintiff's Complaint had been previously dismissed by the Court. Because Plaintiff does not provide any new facts that affect the Court's previous holding that the Court lack's personal jurisdiction over Defendant Danilo Devis Pereira, this Court adopts Judge Poretz's Report and Recommendation *in toto*.

Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Default Judgment against Danilo Devis Pereira is DISMISSED WITH PREJUDICE. Plaintiff's objections are OVERRULED.

The Clerk is directed to forward a copy of this Order to counsel of record.

Entered this 22nd of July, 2005.

/S/
GERALD BRUCE LEE
United States District Judge

Alexandria, Virginia
07 /22/05

Filed: July 22, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ISIDORO RODRIGUEZ, ESQ.,	)
	)
Plaintiff,	)
	)
v.	)Civil No. 02-1523-A
	)
HPF, INC., *et al.*	)
	)
Defendants.	)

Report and Recommendation

I. Procedural History

Before the Court are Plaintiffs Motion forDefauit Judgment against Danilo Devis Pereira (Dkt. no. 48), Verified Affidavit in Support of Motion for Default Judgment against Daiui.io Devis Pereira (Dkt. no. 49), Notice of Hearing for Default Judgement (Dkt. no. 50), and FRCP Rule 38 Demand for a Jury Trial on th.e Issue of Damages (Dkt. no. 51). Plaintiff filed these pleadings with the Court on January 12, 2005, and set the hearing for his Motion on February ii, 2005.

On February 8, 2005, District Judge Gerald B. Lee assigned these matters to Magistrate Judge Barry R. Poretz pursuant to 28 U.S.C. Section 636(b). Because the Record in this action was stored at the Philadelphia Federal Archives and Records Center, the Clerk of this Court on February 8, 2005 requested that the Record be shipped

expeditiously to this Court. Because the Court lacked th.e Record, Judge Poretz on February 9, 2005 removed Plaintiffs instant Motion from the February 11,2005 docket to allow sufficient time for the Record to arrive from Philadelphia. The Court thereafter received the Record on February 10, 2005.

After reviewing the Record, Judge Poretz has dispensed with oral argument on Plaintiffs Motion for Default Judgment Against Danilo Devis Pereira based on the facts and legal conclusion presented in the Record.

II. Factual Summary

On October *15,* 2002, Plaintiff lsidoro Rodriguez, Esq. filed a Complaint against HFP, Inc., Iota Partners L.P., Armada Company, Sea Search-Armada, Doe Entities 1-6, Murdock & Company, Edris E. Harbeston, Jack Harbeston, Jerome Barron, Dave Larocque, Don Middlebrook, Ed Carpenter, Danilo Devis Pereira, and John Does 1-20. (Compl, Dkt. no. 1). Plaintiff sought, *inter alia,* to enforce both a Virginia State Bar legal ethics opinion under the Full Faith and Credit Act and a Virginia attorney's lien for the alleged actions of Defendants relating to the retrieval of treasures from the ship, *San Jose,* off the coast of Columbia. (Compl, Dkt. no. 1).

Motions to Dismiss for Lack of Personal Jurisdiction were filed by Defendant: (a)HFP, Inc. on November 7, 2002 (Dkt. no. 4), (b) Iota Partners, L.P. on November 7, 2002 (Dkt. no. 7), (e) Edris E. Harbeston on November 22, 2002 (Dkt. no. 18), (d) Jack Harbeston on November 22, 2002 (Dkt. no. 19), and (e) Jerome Barron on November22, 2002 (Dkt. no. 20). On November 22, 2002, Plaintiff filed a Motion Pursuant to the U.S. and Virginia Constitutions, as Well as 28 U.S.C. ' 1738, for the Certification of Questions

to the Supreme Court of Virginia as to Enforce a Virginia Attorney's Lien, and Protect Said Lien from a Business Conspiracy and Tortious Interference. (Dkt. no. 14). Judge Lee heard Defendants and Plaintiffs motions on December 13, 2002.

On December 13, 2002, Judge Lee, after hearing oral argument, denied Plaintiffs motion for a certified question and granted Defendants' motions to dismiss. (Hr'g Tr., Dkt. no. 43 at 24-25). By separate order on February 16, 2002, Judge Lee held that this Court lacked personal jurisdiction over all of the Defendants, including Daniio Devis Pereira. (Order, Dkt. no. 40 at 1-2). Judge Lee therefore "dismiss[ed] the complaint as to all Defendants" and denied Plaintiff leave to amend. (Ordef, Dkt. no. 40 at 2-3). On Plaintiffs appeal, the U.S. Court of Appeals for the Fourth Circuit affirmed Judge Lee's decision on October 10, 2003, and the U.S. Supreme Court denied Plaintiffs petition for a writ of certiorari on March 8, 2004. *Rodriguez v. HFP, Inc.,* 77 Fed. Appx. 663, 2003 WL 22321038, *1 (4th Cir. 2003), *cert. denied,* 124 S.Ct. 1603 (2004) (No. 03-971).

III. Conclusion and Recommendation

The Magistrate Judge finds that this Court lacks the jurisdiction to hear Plaintiffs Motion for Default Judgment against Danilo Devis Pereira because Plaintiffs Complaint had been previously dismissed by this Court. Consequently, the Magistrate Judge recommends that Plaintiffs instant Motion be dismissed with prejudice.

IV. Notice

All the parties are advised that objections to this Report an.d Recommendation pursuant to 28 U.S.C. Section 636 and Federal Rule of Civil Procedure 72(b) must be filed

within ten (10) d.ays after service. A failure to file timely objections waives appellate review of a judgment based on this Report and Recommendation.

/S/
Barry R. Portez
United States Magistrate Judge

February 11, 2005
Alexandria, Virginia